



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

TSIOUNIS et al.

Atty. Ref.: 4915-2; Confirmation No.

Appl. No. 09/780,031

TC/A.U. 3628

Filed: February 9, 2001

Examiner: H. S. Sough

For: METHODS AND SYSTEMS FOR MAKING SECURE ELECTRONIC PAYMENTS

\* \* \* \* \*

June 20, 2006

Technology Center 1600  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION (MPEP 711.03(c) II AND 37 CFR §1.181) OR, ALTERNATIVELY, PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION**

Petition is hereby made to withdraw any PTO holding of abandonment of the above-identified application because, *inter alia*, the PTO PAIR system confirms that a December 23, 2004 non-final Office Action was returned to the PTO on January 14, 2005 as undelivered. In light of the circumstances outlined in the attached Martin Declaration, the petitioner requests that any PTO holding of abandonment based upon the failure to respond to the undelivered office action be withdrawn without any petition fee.

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Alternatively, if this request to withdraw any holding of abandoned is denied, the petitioner requests that this petition be treated as a petition to revive an unintentionally abandoned application.

Mr. Martin on behalf of the patent application owner began an investigation as to the status of the above-identified application in the March of 2006 time frame. Martin Declaration, Par. 6

As set forth in the Martin Declaration and by the PTO record, the above-identified non-provisional patent application Serial No 09/780031 ("Methods and Systems For Making Secure Electronic Payments") was filed on February 9, 2001 and was originally assigned to InternetCash Corporation. After InternetCash ceased operations, the company's intellectual property, including the subject application, was acquired by Tolmi, LLC. Martin Declaration, par. 5.

According to the public PAIR system, a non-final rejection was mailed on December 23, 2004 during a time frame when the then active counsel, the Smyrski & Livesay firm, was in the process of ceasing operations. Martin Declaration, par. 8. Further, it may be the case that the Office Action was sent to an incorrect address, since the "1561 Laurel Street" address on the Office Action does not correspond to the "751 Laurel Street" address for Smyrski & Livesay identified as part of the correspondence street address for this firm in application 20040088473 that was published on May 6, 2004. See the attached page from published application 20040088473 from the PTO web

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site. Either or both of these circumstances may have contributed to the failure of the applicants to receive the December 2004 Office Action.

The PTO public record documents that the December 23, 2004 Office Action was returned to the PTO undelivered. The PAIR system reflects no further communications from the PTO for this application.

During the relevant time frame, Paul Livesay, formerly of Smyrski & Livesay, LLP was responsible for all matters related to Tolmi. Martin Declaration, Par. 6 and 7.

The PTO's record that the December 2004 Office Action was undelivered is consistent with the recollection of Mr. Livesay, who was surprised to learn that an office action had been returned to the PTO and was unaware of any such Office Action. Martin Declaration, par. 15.

In view of the foregoing and the facts set forth in Martin Declaration, please withdraw any holding of abandonment and resend the December 23, 2004 Office Action with a response due date of three months from the date of remailing.

If the PTO decides not to withdraw a holding of abandonment, it should be recognized that due to the applicants failure to receive the December 23, 2004 Office Action, the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional (MPEP 711.03(c)). Thus, alternatively, please find that any abandonment of this application was unintentional and charge the undersigned's deposit account number accordingly.

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The petitioner requests that, if a response to the undelivered office action is required, the applicants be given notice and an opportunity to promptly forward a response to the Office Action. The PTO is authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

If there are any questions, please contact the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:   
Mark E. Nusbaum  
Reg. No. 32,348

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Sir:

**DECLARATION OF RANDAL J. MARTIN**

I, Randal J. Martin, hereby declare of my own personal knowledge and/or belief that:

1. I reside at 10510 Regent Circle, Naples, Florida 34109.
2. I am currently employed at Zenerji LLC as a Chief Technology Architect. I also serve as a patent liaison between Addison M. Fischer, CEO of Zenerji and holder of numerous U.S. patents, and Nixon & Vanderhye, P.C., Mr. Fischer's patent counsel.
3. Mr. Fischer is a major stockholder and is authorized to act on behalf of Tolmi, LLC, the owner of all right, title and interest in the above-identified application.

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4. The above-identified non-provisional patent application Serial No 09/780031 ("Methods and Systems For Making Secure Electronic Payments") was filed 02/09/2001 and was originally assigned to InternetCash Corporation.

5. InternetCash Corporation has since ceased operations. The company's intellectual property was acquired by Tolmi, LLC.

6. During March of 2006, I was tasked with investigating and evaluating the intellectual property of InternetCash Corporation. I received incomplete files relating to this intellectual property. Through these files, with the assistance of the Public PAIR system on the PTO web site, I was able to determine that an office action for application Serial No. 09/780,031 had been returned to the PTO as undelivered.

7. As a result of my investigation, I learned that in August 2002 all files relating to InternetCash intellectual property was turned over to Paul Livesay of Smyrski & Livesay, LLP. In October 2002, a power of attorney was filed with the PTO appointing Paul Livesay and Steven W. Smyrski of Smyrski & Livesay, LLP to prosecute the subject application before the PTO.

8. In a phone conversation with Steven W. Smyrski, I learned that Smyrski & Livesay was in the process of ceasing operations in December 2004. Mr. Smyrski confirmed that Paul Livesay was responsible for all matters related to Tolmi.

9. According to the Public PAIR system a non-final Office Action was mailed on December 23, 2004. I was informed by Mr. Smyrski that during this time frame the Smyrski & Livesay firm was in the process of ceasing operations.

10. The PAIR system indicates that this office action was returned to the USPTO on January 14, 2005 as undelivered. There is no record of further communications from the PTO for this case.

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11. It appears that the PTO may have sent the Office Action to an incorrect address since the "1561 Laurel Street" address on the Office Action does not correspond to the "751 Laurel Street" address for Smyrski & Livesay identified as part of the correspondence street address for this firm in application 20040088473 that was published on May 6, 2004.

12. On March 17, 2006, I first discovered that the office action on the subject application had been returned by the PTO as undelivered.

13. I made numerous unsuccessful attempts to communicate with Paul Livesay, the addressee of the undelivered office action.

14. On May 19, 2006 I first made contact with Paul Livesay, who is no longer associated with Smyrski & Livesay. I learned that he is no longer actively practicing patent law.

15. Mr. Livesay informed me that he was surprised to learn that an office action had been returned to the PTO. He informed me that he was unaware of any such Office Action.

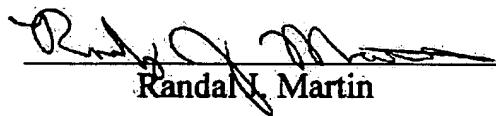
16. It is my view as confirmed by the PTO's own records that the December 23, 2004 Office Action was never received. Therefore, any abandonment for failure to respond to this Office Action was unintentional.

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17. I certify that the statements made based upon my personal knowledge are true and correct and that the opinions expressed are believed to be correct.

Dated: June 19, 2006  
Naples, Florida



Randa N. Martin

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Sir:

**EXCLUSIVE SUBSTITUTE POWER OF ATTORNEY  
AND EXCLUSIVE PROSECUTION HEREAFTER BY  
ASSIGNEE UNDER 37 C.F.R. §§ 1.36, 3.71 AND 3.73**

Tolmi, LLC, being the owner of all right, title and interest in the above-identified patent application, hereby revokes all previous powers of attorney in this case, if any, and hereby appoints the attorneys of **Customer Number 23117** individually and collectively its attorneys to prosecute this application and to transact all business in the Patent and Trademark Office in connection therewith, and with the resulting patent.

Tolmi, LLC also authorizes Nixon & Vanderhye to act and rely solely on instructions communicated from the person, attorney, firm or other organization sending instructions to Nixon & Vanderhye on behalf of the owner.

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**Certificate Under 37 C.F.R. §3.73(b)**

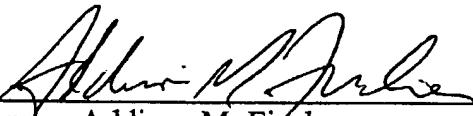
Pursuant to 37 C.F.R. 3.73(b), Tolmi, LLC a Delaware limited liability company states that it is the assignee of the entire right, title, and interest of patent application identified above by virtue of an assignment from the inventors thereof. The assignment was recorded in the United States Patent and Trademark Office at Reel 012241, Frame 0024.

The undersigned is empowered to sign this statement on behalf of Tolmi, LLC.

Tolmi, LLC

By:

\_\_\_\_\_  
Date

  
Name: Addison M. Fischer  
Title: Member, Tolmi, LLC

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